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Situation of human rights in the Palestinian territories occupied since 1967

Note by the Secretary-General**

The Secretary-General has the honour to transmit to the members of the General Assembly the report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Richard Falk, submitted in accordance with Human Rights Council resolution 5/1.

* A/65/150.

** The present report was submitted late in order to include the most up-to-date information.

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Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967

Summary

The present report considers developments relevant to the obligations of Israel under international law, as well as the situation of people living in the Occupied Palestinian Territories. Emphasis is given to the cumulative impact of Israeli policies in the West Bank and East Jerusalem arising from prolonged occupation, which exhibits features of colonialism and apartheid, as well as transforming a de jure condition of occupation into a circumstance of de facto annexation.

These developments encroach on the inalienable Palestinian right of self-determination in fundamentally detrimental ways. Attention is also devoted to habitual concerns involving settlement growth in the West Bank and East Jerusalem, the problems posed by the continued construction of the separation wall, issues of collective punishment, and a variety of other human rights concerns, including concern over the health-related and other adverse impacts of the continuing blockade of the 1.5 million residents of Gaza, consideration of the "Freedom Flotilla" incident of 31 May 2010 and the continuing effort to assess whether Israel and the responsible Palestinian authorities have carried out adequate investigations of war crimes allegations arising from the Gaza conflict of 2008-2009.

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I. Introduction and overview

1. The Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967 has again prepared the present report without the benefit of cooperation from the Government of Israel. This has meant an inability to gain access to the Occupied Palestinian Territories or to have contact with Palestinians living under occupation. Future reports will compensate for this deficiency by seeking access to the Gaza Strip on the basis of cooperation by the Government of Egypt and meetings with relevant personalities in countries bordering the Occupied Palestinian Territories. It should be noted once again that Israel, as a Member of the United Nations, is in violation of its legal obligation to cooperate with the Organization in carrying out its official duties. This failure is especially serious as the International Court of Justice noted in its advisory opinion,[1] rendered on 9 July 2004 that the United Nations has "a special responsibility" for the peaceful resolution of the Israel-Palestine conflict. The Special Rapporteur will continue to seek cooperation from the Government of Israel, but it would be helpful as well if the Human Rights Council, the General Assembly and the Secretariat of the United Nations implemented their obligation to take action to seek Israeli cooperation to the extent mandated by international law.

2. There have been many adverse developments in recent months that have intensified the ordeal of the Palestinians living under occupation in the West Bank, East Jerusalem and Gaza. Several of those developments will be discussed in greater detail below in the substantive sections of the present report. It continues to be important to call attention to the cumulative process of Israeli encroachment on fundamental and inalienable international human rights standards — that dimension of the Palestinian right of self-determination relating to territorial integrity. The right of self-determination is the underpinning of all other human rights, as is recognized by its inclusion in article 1 common to both international covenants on human rights, and also by its status as a peremptory norm of customary international law. This inalienable right belongs to all peoples, including non-self-governing peoples, and is being denied whenever a people is living under the harsh, oppressive and alien conditions of externally imposed rule that have characterized the belligerent occupation of the West Bank, East Jerusalem and Gaza since 1967. The oppressiveness of Israel's occupation over more than 43 years is evident in the range of Israeli violations of the Fourth Geneva Convention and of applicable international human rights law, as well as of defiance of the International Court of Justice and of numerous resolutions and decisions of the General Assembly and the Security Council.

3. Beyond these general characteristics of unlawfulness pertaining to the occupation lie the additional severe conditions depicted by my predecessor, John Dugard, in his January 2007 report to the Human Rights Council.[2] Professor Dugard pointed to "features of colonialism and apartheid" that characterize Israel's occupation, aggravating the charges of unlawfulness, and creating additional obligations and responsibilities for Israel as the occupying Power, for third States,

[1] See A/ES-10/273 and Corr.1; see also *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004*, p. 136, and General Assembly resolution ES-10/15.

[2] See A/HRC/4/17.

and for the United Nations.[3] Colonialism constitutes a repudiation of the essential legal rights of territorial integrity and self-determination, and apartheid has come to be formally treated as a crime against humanity.[4] The gravity of these contentions underscores the claim that the occupation constitutes a severe and unprecedented denial of the right of self-determination that has long been in urgent need of rectification and reparations.[5] The unlawfulness of colonial governance and the criminality of apartheid also have the special status in international law of being "peremptory norms".[6] It is the opinion of the current Special Rapporteur that the nature of the occupation as of 2010 substantiates earlier allegations of colonialism and apartheid in evidence and law to a greater extent than was the case even three years ago. The entrenching of colonialist and apartheid features of the Israeli occupation has been a cumulative process. The longer it continues, the more difficult it is to overcome and the more serious is the abridgement of fundamental Palestinian rights.

4. The allegation of colonialism as a feature of Israel's occupation is best understood in relation to the extensive and continuing settlement process, which encompasses the official 121 settlements (and 102 "outposts" illegal under Israeli law) and the extensive network of Jewish-only roads connecting the settlements to one another and to Israel behind the green line.[7] The totality of this encroachment on the territory of the West Bank has been estimated to be 38 per cent if all restrictions on Palestinian control and development are taken into account. This de facto annexation of Palestinian territory is reinforced by the construction of 85 per cent of the separation wall on occupied Palestinian territory in a manner declared unlawful in the almost unanimous (14-1) 2004 advisory opinion of the International Court of Justice. It is widely believed that the settlement blocs and the land to the West of the wall (comprising 9.4 per cent of the West Bank) have been permanently integrated into Israel in a manner that international negotiations are incapable of reversing. The Government of the United States of America, the main sponsor of negotiations between the parties, reportedly holds the position that Israel can retain some of the settlements in the West Bank as part of any resolution of the conflict.[8] This position discloses a continuing insistence that negotiations must incorporate "facts on the ground" although many of those facts manifestly violate international humanitarian law. In effect, "peace" would be based not on an unconditional withdrawal from territory occupied in 1967, as mandated by Security Council

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[3] Ibid., para. 62.

[4] See article 7, Rome Statute of the International Criminal Court, United Nations, *Treaty Series*, vol. 2187, No. 38544; and General Assembly resolution 1514 (XV), "Declaration on the Granting of Independence to Colonial Countries and Peoples", 14 December 1960.

[5] These legal conclusions follow from the following authoritative texts of international law doctrine: the Declaration on the Granting of Independence to Colonial Countries and Peoples (1960) and the International Convention on the Suppression and Punishment of the Crime of Apartheid (1973). Apartheid is listed as one type of crime against humanity in article 7 of the Rome Statute of the International Criminal Court.

[6] Article 53 of the Vienna Convention on the Law of Treaties (1969) defines a peremptory norm as "a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character".

[7] See Canadians for Justice and Peace in the Middle East, "Factsheet: Illegal Israeli Colonies in the Occupied Palestinian Territories", April 2010, available at http://www.cjpme.org/DisplayDocument.aspx?DocumentID=760&SaveMode=0.

[8] See Matthew Lee, "US Readies New Mideast Peace Push", Associated Press, 7 January 2010.

resolution 242 (1967), but on a set of subsequently created unlawful conditions that encroach on Palestinian rights under international law and curtail territorial prospects for an eventual Palestinian State. Israel's colonialist ambitions and policies are also expressed through appropriation of the resources of occupied Palestinian territory, especially water, and disproportionately and in a discriminatory manner making a far greater amount of water resources available to the unlawful settlements compared with lawful Palestinian inhabitants and refugees (4 to 5 times the per capita amount supplied to settlers, at an estimated one fifth of the price charged to Palestinians).[9] This means that the occupation has become a form of colonialist annexation that severely compromises the territorial integrity of any future independent Palestinian entity. Israel has declared and acted upon its annexationist intentions in East Jerusalem ever since the conclusion of the war of June 1967 and has taken steps to consolidate its administrative control over a unified and enlarged Jerusalem. These steps have included efforts to reduce the number of Palestinians living in East Jerusalem, as well as to encourage and subsidize the establishment and expansion of large, unlawful settlements within the parts of the city occupied in 1967, which were historically overwhelmingly Palestinian and have been internationally regarded as the capital of a future Palestinian state.[10] This settlement process violates article 49 (6) of Fourth Geneva Convention, which prohibits the transfer of the population of an occupying power to the territory temporarily occupied, and involves a determined political effort by Israel to transform a set of conditions that are legally and politically temporary into a permanent reality. After more than four decades, it is appropriate to conclude that Israel's occupation of Palestinian territories has ceased to be temporary, and acknowledge that it has become tantamount to permanent.

5. Apartheid, although associated with the specific circumstances of racism that prevailed in South Africa until 1994, by virtue of the International Convention on the Suppression and Punishment of the Crime of Apartheid and of being defined in the Rome Statute as a crime against humanity, is applicable to other situations in which discriminatory racial practices entailing a dual structure of rights and duties are imposed by prevailing law on a subordinated people. The Convention relating to apartheid criminalizes "inhuman acts committed for the purpose of establishing and maintaining domination by one racial group of persons over any other racial group of persons and systematically oppressing them".[11] The Rome Statute criminalizes "inhumane acts" committed in the context of, and aimed at maintaining, "an institutionalized regime of systematic oppression and domination by one racial group over any other racial group".[12] It is this general structure of apartheid that exists in the Occupied Palestinian Territories that makes the allegation increasingly credible despite the differences between the specific characteristics of South African apartheid and that of the Occupied Palestinian Territories regime. There is a question of definition as to whether Jews and Palestinians are "racial groups" within

[9] See Badil Resource Center for Palestinian Residency and Refugee Rights, *Al Madal*, No. 39/40 (autumn 2008/winter 2009), and Amnesty International, *Troubled Waters — Palestinians Denied Fair Access to Water*, 2009.

[10] See Security Council resolutions 242 (1967), 338 (1973), 1397 (2002), 1515 (2003) and 1850 (2008): East Jerusalem is considered by the international community to be an occupied Palestinian territory.

[11] See the International Convention on the Suppression and Punishment of the Crime of Apartheid, article II (resolution 3068 (XXVIII), 30 November 1973).

[12] The Rome Statute of the International Criminal Court, article 7.2 (h).

the meaning of these legal instruments. Some salient apartheid characteristics will be listed, although owing to limitations of space it is not possible to provide detailed accounts of these features of the occupation. For details on the apartheid character of the Israeli occupation, there exists an expert study that is both reliable and convincing.[13] Among the salient apartheid features of the Israeli occupation are the following: preferential citizenship, visitation and residence laws and practices that prevent Palestinians who reside in the West Bank or Gaza from reclaiming their property or from acquiring Israeli citizenship, as contrasted to a Jewish right of return that entitles Jews anywhere in the world with no prior tie to Israel to visit, reside and become Israeli citizens; differential laws in the West Bank and East Jerusalem favouring Jewish settlers who are subject to Israeli civilian law and constitutional protection, as opposed to Palestinian residents, who are governed by military administration; dual and discriminatory arrangements for movement in the West Bank and to and from Jerusalem; discriminatory policies on land ownership, tenure and use; extensive burdening of Palestinian movement, including checkpoints applying differential limitations on Palestinians and on Israeli settlers, and onerous permit and identification requirements imposed only on Palestinians; punitive house demolitions, expulsions and restrictions on entry and exit from all three parts of the Occupied Palestinian Territories.

6. It should also be noted that the conditions of the continuing Israeli occupation of Gaza rest on the operational reality of effective control, despite the Israeli "disengagement" in 2005, which involved the withdrawal of ground forces and the dismantling of settlements. In this regard, the situation in Gaza, although legally and morally deplorable, is not characterized by either colonial ambitions as to territory and permanence or an apartheid structure. Such an assertion is not meant to minimize the unlawfulness, and seeming criminality, of the blockade of Gaza that has been maintained since mid-2007, in violation of the prohibition against collective punishment contained in article 33 of the Fourth Geneva Convention, but only to distinguish it. Gaza has been recently described by the Prime Minister of the United Kingdom of Great Britain and Northern Ireland, David Cameron as "a prison camp".[14] Such a persistent situation of pervasive abuse seems to raise the level of responsibility for the United Nations and Member States, as underscored by the former Secretary-General, Kofi Annan. He observed that the primary raison d'être of every State is to protect its population, but that "if national authorities are unable or unwilling to protect their citizens, then the responsibility shifts to the international community" to use all necessary means, "including enforcement action" if lesser methods prove insufficient.[15] It would seem that the Gazans, although not citizens of the occupying State, enjoy the status of "protected persons" under international humanitarian law. They have been left unprotected with respect to their basic rights for many years, in violation of the spirit and the letter of what then Secretary-General Annan agreed was an emerging norm imparting "a collective responsibility to protect", a responsibility that he declared "we must embrace ... and, when necessary, ... act on it".[16] Gaza has long presented such a challenge in a

[13] Human Sciences Research Council of South Africa, "Occupation, Colonialism, Apartheid? A reassessment of Israel's practices in the occupied Palestinian territories under international law", Cape Town, 2009.

[14] BBC News, "David Cameron describes blockaded Gaza as a 'prison'", 27 July 2010; available at www.bbc.co.uk/news/world-middle-east-10778110.

[15] See A/59/2005, para. 135.

[16] Ibid.

situation of acute and massive humanitarian suffering resulting from the policies of the occupying Power.

7. It is important to take note of the relevance of the Advisory Opinion of the International Court of Justice on the accordance with international law of the unilateral declaration of independence in respect of Kosovo.[17] The legal conclusion reached by a 10-4 majority was that Kosovo's unilateral declaration of independence on 17 February 2008 did not violate international law. Although such a legal proceeding is formally classified as an advisory opinion, it is considered by most jurists to represent the most authoritative assessment of contested international legal issues available within the international community. Such an authoritative finding by the highest judicial body in the United Nations is potentially relevant to the implementation of the right of self-determination for Palestinians. The International Court of Justice observed that there had been a prolonged failure by governmental representatives in Pristina and Belgrade to resolve by negotiation the issue of the legal status of Kosovo, making the issuance of a unilateral declaration by Kosovo a reasonable course of action.[18] This issue has a bearing on the situation pertaining to the human rights of Palestinians, who have lived so long under occupation. As is generally accepted, the right of self-determination is the most fundamental right of a people, and it applies especially to those subject to any form of external domination interfering with self-governance, economic development, human rights and control over collective destiny. The existence of a Palestinian right of self-determination, by way of establishing an independent State, has been accepted by a consensus of Governments and by the United Nations, and it is an operating premise of "the road map" guiding the Quartet.[19] The failure of bilateral international negotiations over the course of decades to establish a final status for Palestine or to insist upon Israeli withdrawal from Palestinian territories occupied in 1967 (as unconditionally and unanimously prescribed in 1967 by the Security Council in its resolution 242 (1967)) creates a background that resembles, and in some dimensions exceeds, in important respects the situation confronting the Government of Kosovo. There has existed overwhelming evidence for many years that Israeli control over the Occupied Palestinian Territories has been oppressive from the perspective of international law, as referenced by unlawful occupation policies given the requirements of international humanitarian law and international human rights law. Lengthy negotiations have not resolved the issue of the status of Palestine, nor do they offer any reasonable prospect that any resolution by negotiation or unilateral withdrawal will soon occur. Under these circumstances, it would seem that one option available to the Palestine Liberation Organization (PLO) acting on its own or by way of the Palestinian Authority under international law would be to issue a unilateral declaration of status, seeking independence, diplomatic recognition and membership in the United Nations. The Kosovo advisory opinion provides a well-reasoned legal precedent for such an initiative, although the Statute of the International Court of Justice, states clearly, in article 59, that even in its more obligatory "decisions" the outcome has "no binding force except between the parties and in respect of that particular case". At the same time, the similarities between the

[17] See A/64/881.

[18] Ibid., para. 105.

[19] See S/2003/529, containing the full text of the road map to realize the vision of two States, Israel and Palestine, living side by side in peace and security, as affirmed in Security Council resolution 1397 (2002).

situation confronting the Palestinian Authority/PLO and that confronting the Government of Kosovo suggest the likelihood of a similar outcome in the event that the International Court of Justice were to be consulted. Also, the reasonableness of claiming the legality of a Palestinian unilateral declaration is fortified by this Kosovo precedent, if such a course of action is adopted. This possible development is relevant to appraising Israeli violations of human rights in the Occupied Palestinian Territories because of its bearing on the deferred exercise of the Palestinian right of self-determination under extremely strained circumstances. The Palestinian Authority Prime Minister, Salam Fayyad, stated that as Palestinians "see things happening on the ground, the state of Palestine moves from being just a concept that people talk about into the realm of the possible — and then into reality".[20] The Kosovo advisory opinion gives this Palestinian aspiration a push towards political reality, as well as legal reality.

II. Occupation policies in the West Bank and East Jerusalem

A. General observations

8. The United Nations has in recent years been understandably preoccupied with the humanitarian crisis caused by the Israeli attacks on Gaza at the end of 2008 (Operation Cast Lead) and by the blockade, as well as by civil society initiatives aimed at challenging the blockade on the basis of international law and morality. These issues, and their aftermath, rightly remain high on the United Nations agenda, but it is important to realize that the developments in the West Bank and East Jerusalem may have longer-lasting impacts on the future of the Palestinian people as a whole than the situation, however extreme and dire, that confronts the 1.5 million Palestinians in Gaza. The concerns about annexation, colonialism and apartheid referred to above are absent from Gaza, where Israeli responsibility for violations of human rights seems to have different objectives. For instance, as stated by the former Commissioner of the European Union, Lord Chris Patten: "The aim [of Israel] is to choke the economy and push the Gazans into the unwilling embrace of Egypt".[21] From the perspective of self-determination, this involves an alternative encroachment on the integrity and unity of Palestinians as an occupied people, separating Gaza from the West Bank in defiance of Palestinian wishes either in the West Bank/East Jerusalem or Gaza, and in violation of numerous United Nations resolutions affirming the integrity of the Occupied Palestinian Territories as a single entity.[22] From the perspective of the Palestinian Authority, this may eventually result in the exclusion of a major segment of the Occupied Palestinian Territories from any future integrated Palestinian polity, the presupposition of the two-State consensus and Security Council resolution 242 (1967). A parallel set of Israeli policies has made it progressively more difficult for Palestinians to move between Jerusalem and the West Bank and almost impossible for them to go either to or from Gaza.[23] This fragments the Palestinian people in such a way as to make it almost impossible to envision the emergence of a viable Palestinian State. These

[20] *Financial Times*, interview with Salam Fayyad, 30 July 2010.

[21] *Financial Times*, "To avert disaster, stop isolating Hamas", 28 July 2010.

[22] See Security Council resolutions 242 (1967), 338 (1973), 1397 (2002) and 1402 (2002).

[23] See A/HRC/13/54, report of the United Nations High Commissioner for Human Rights on the implementation of Human Rights Council resolutions S-9/1 and S-12/1.

developments give an aura of implausibility to the invocation of a two-State solution as the path to Palestinian self-determination, leading informed commentators to believe that the future of Palestine will be one State together with Israel, leaving open the question as to whether it would be a democratic and secular State (an alternate formula for Palestinian self-determination), or whether Israeli "occupation" would continue to be a distinctive mixture of colonialist and apartheid elements (thereby indefinitely obstructing the exercise of the Palestinian right of self-determination).

9. This push can take contradictory turns in the face of a newly shared Israeli realization that a new legal regime must be established to govern Israeli/Palestinian relations. An implied recognition of the untenability of the facade of occupation and the pretension to a two-State consensus has recently surfaced in Israel in the form of calls for the unilateral establishment of a single, unified State that incorporates the West Bank and East Jerusalem, while renouncing all claims with regard to Gaza. Prominent Israeli political figures, including Moshe Arens, the former Defence Minister and Minister for Foreign Affairs; member and current Speaker of the Knesset, Reuven Rivlin; Knesset member Tzipi Hotovely; and Uri Elitzur, former chair of the Yesha Council of Settlements, have each separately called for such a solution. In most respects, the Israeli one-State solution involves a legalization of de facto annexation without altering the nature of the claim to be a Jewish State, and with deferred and distinctly second-class Israeli citizenship made available to Palestinians now living under occupation. This type of "solution" tries to sweeten the appearance of the present apartheid and colonialist realities of the occupation without altering the substance of these oppressive conditions. Its implementation would be a total repudiation of Palestinian rights under international law, especially the right of self-determination. Fully consistent with such Israeli discussions is the proposal floated in July 2010 by the Minister for Foreign Affairs of Israel, Avigdor Lieberman, advocating an end of the Gaza blockade, coupled with Israeli encouragement of the immediate establishment of a Gazan state. Lieberman offers several justifications for such a proposal, including the benefits of alleviating outside pressure on Israeli settlement expansion in the West Bank and East Jerusalem. Apparently, part of his idea is to keep the Quartet and George Mitchell busy working out a regime for an independent Gaza that operates in a way that does not threaten Israeli security concerns.[24] On the Palestinian side, an analogous shift in favour of a one-State solution is also evident, especially among leading exile voices, but their proposals envision the establishment of a single secular and democratic State of Palestine/Israel, with equal rights for both peoples and no Jewish identity for the State. There are some other signs of dissatisfaction with reliance on a revived "peace process" to achieve conflict resolution and end the occupation, including some calls for the United States to impose a solution on the parties. Although the impulse is understandable as a result of the failure of negotiations, an imposed solution remains unacceptable to both parties and is unlikely to take adequate account of infringed Palestinian rights. There is also an issue of credibility, given that the United States is the proclaimed unconditional ally of Israel, the party generally viewed as having unlawfully abused its role as occupying Power.

[24] For useful commentary see Henry Siegman, "An immodest — and dangerous — proposal", The Middle East Channel, *Foreign Policy*, 9 August 2010.

B. Poverty and children in the West Bank

10. There is an impression that the Palestinians living in the West Bank have been flourishing in terms of material well-being in recent years. It is true that employment and investment in certain geographic and economic sectors of the West Bank have recently flourished, as evidenced by the fact that overall economic growth was reported to have been 8.5 per cent in 2009.[25] The State-building efforts of Prime Minister Fayyad have also been viewed favourably as a practical means of moving towards the realization of self-determination. Mr. Fayyad stated that "[T]he essence of what we are doing is getting ready for statehood, in every possible way possible — in terms of having the capacity to govern ourselves, improving institutions and having adequate infrastructure".[20] At the same time all is not well with respect to the material conditions of the people, especially those living in "Area C", the 60 per cent of the West Bank that exists under complete Israeli military administration, in which approximately 40,000 Palestinians live and which is also the scene of a greatly increased number of demolitions and even the destruction of Palestinian villages.[26] A recently updated 2009 report, "Life on the Edge", published by Save the Children UK, paints a grim picture of life in Area C.[27] The main conclusion reached in the report is that Israeli policies of land confiscation, expanding settlements, lack of such basic services as food, water, shelter, and medical clinics is at "a crisis point", with food security problems even worse than in Gaza.[28] According to the report, 79 per cent of the communities surveyed recently do not have enough nutritious food; this is a rate higher than in blockaded Gaza, where it is 61 per cent.[29] Israel is accused in the report of creating a situation in which Palestinian children growing up in Area C experience malnutrition and stunted growth at double the level of children in Gaza. Forty-four per cent of those children were found to suffer from diarrhoea, which often proved lethal. Save the Children UK writes that Israel's restrictions on Palestinian access to and the development of agricultural land — in an area where almost all families are herders — mean that thousands of children are going hungry and are vulnerable to deadly illnesses such as diarrhoea and pneumonia. Jihad al-Shommali of Defense for Children International was recently quoted as saying, with reference to the problems facing children in Area C, "Children are being forced to cross settlement areas and risk beatings and harassment by settlers, or walk for hours, just to get to school ... many children are losing hope in the future".[30] This overall pattern suggests systematic violations by Israel of article 55 of Fourth Geneva Convention and article 69 of the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) of 1977, which delimits Israel's obligations to ensure adequate provision of the basic

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[25] International Monetary Fund, "Macroeconomic and Fiscal Framework for the West Bank and Gaza: Fifth Review of Progress", staff report for the meeting of the Ad Hoc Liaison Committee, 13 April 2010; available at www.imf.org/wbg.

[26] Office for the Coordination of Humanitarian Affairs, *Special Focus: "Lack of Permit" Demolitions and Resultant Displacement in Area C*, May 2008.

[27] Save the Children UK, "Life on the Edge: The Struggle to Survive and the Impact of Forced Displacement in High-Risk Areas of the Occupied Palestinian Territory", October 2009.

[28] Ibid., p. 65.

[29] Ibid., p. 24.

[30] Jihad al-Shommali of Defense for Children International-Palestine Section, *The Electronic Intifada*, "Israeli colonization means life of poverty for West Bank children", 12 July 2010; available at http://electronicintifada.net/v2/article11386.shtml.

needs of people living under its occupation, especially in Area C, where it exercises undivided control. Article 55 states: "To the fullest extent of the means available to it, the Occupying Power has the duty of ensuring the food and medical supplies of the population; it should, in particular, bring in the necessary foodstuffs, articles or medical stores and other articles if the resources of the occupied territory are inadequate." This duty is more fully specified in article 69 of Protocol I under the title "Basic needs in occupied territories".[31] Particular concern for the protection of children living under occupation is expressed in article 50 of the Fourth Geneva Convention and articles 77 and 78 of Protocol I. In conclusion, Israel is not meeting its obligations as occupying Power to Palestinian children living in Area C.

C. Settlements

11. According to the most recent figures available, there are 121 Israeli settlements, sometimes called "colonies", plus approximately 102 "outposts" that have been established in violation of Israeli law.[32] The current settler population is more than 462,000, with 271,400 people living in the West Bank and 191,000 living in East Jerusalem.[33] Revealingly, the settler population has grown at the rate of 4.9 per cent per year since 1990, while Israeli society as a whole has grown at the lower rate of 1.5 per cent.[34] Some of the larger settlements have grown even faster.[35] According to an updated study by B'Tselem, the three largest West Bank settlements had rapid growth between 2001 and 2009: Modi'in Illit increased by 78 per cent, Betar Illit by 55 per cent, Ma'ale Adummim by 34 per cent.[36] As stated in previous reports, all Israeli settlements in the West Bank and East Jerusalem are violations of international humanitarian law. This has been repeatedly recognized by the United Nations and by expert legal opinion. It was well expressed in the International Court of Justice advisory opinion of 2004 on the separation wall: "Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, are illegal and an obstacle to peace and to economic and social development [and] have been established in breach of international law".[37] This legal consensus was recently reiterated by Secretary-General Ban Ki-Moon: "Let us be clear, all settlement activity is illegal anywhere in occupied territory, and this must stop."[38] The illegality is usually anchored in an interpretation of article 49(6) of the Fourth Geneva Convention, which prohibits an occupying Power from transferring its population to the territory under temporary occupation. Israel contests the status of

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[31] Article 69 (1), Protocol I reads: "In addition to the duties specified in Article 55 of the Fourth Convention concerning food and medical supplies, the Occupying Power shall, to the fullest extent of the means available to it and without any adverse distinction, also ensure the provision of clothing, bedding, means of shelter, other supplies essential to the survival of the civilian population of the occupied territory and objects necessary for religious worship".

[32] See B'Tselem, "By Hook and by Crook: Israeli Settlement Policy in the West Bank", July 2010, p. 9.

[33] See Palestine Monitor factsheet on Israeli settlements, last updated 15 March 2010; available at www.palestinemonitor.org/spip/spip.php?article7.

[34] Jerusalem Post, "Settler population rose 4.9% in 2009", 10 March 2010.

[35] Ibid.

[36] See B'Tselem, "By Hook and by Crook: Israeli Settlement Policy in the West Bank", p. 11.

[37] International Court of Justice, *The Wall* (see footnote 1).

[38] *The Times*, "Israel to ask US for bombs in the fight against Iran's nuclear sites", 21 March 2010; available at www.timesonline.co.uk/tol/news/world/middle_east/article7069724.ece.

the West Bank as occupied territory, declaring it to be subject to competing claims of sovereignty and thus outside the obligatory scope of the law governing belligerent occupation.[39] To the detriment of the authority of international law, there exists some ambiguity about the position of these settlements in an Israel/Palestine peace process that casts doubt on whether, despite their unlawfulness, most settlements are likely to be incorporated into Israel if the parties agree to resolve their conflict. This prospect was affirmed in a 2004 letter written by then President George W. Bush to then Prime Minister Ariel Sharon containing the following operative language: "In light of the new realities on the ground, including already existing major Israeli population centers, it is unrealistic to expect that the outcome of final status negotiations will be a full and complete return to the armistice lines of 1949, and all previous efforts to negotiate a two-state solution have reached the same conclusion. It is realistic to expect that any final status agreement will only be achieved on the basis of mutually agreed changes that reflect these realities".[40] It should be understood that this letter possesses considerable political weight in shaping the expectations of the parties, but has no legal weight, as the Government of the United States is not in a position to diminish Palestinian legal rights. The formulation in the letter has been widely interpreted to mean that Israel would keep the settlement blocs where most West Bank settlers live, and in exchange would give an emergent Palestinian entity an equivalent amount of land as a way of compensating for the loss of territory. In fact, it has been an implicit article of faith in the road map and on the Palestinian side as well, although the latter formally still demands withdrawal from all territory occupied in 1967, that Israel would retain the settlement blocs in any peace plan, which would incorporate and legitimize approximately 385,000 illegal settlers in 80 settlements. These are the settlements located in the territory between the separation wall and the Green Line, indicating to many observers that the wall was located with territorial incorporation into Israel proper as an explicit objective. This ambiguity associated with the settlements as being unlawful and yet at the same time creating "legitimate" expectations, i.e., as being proper to weigh in an eventual negotiating balance, is reinforced by reports of extensive American tax-free donations in support of illegal settlement building over the past decade amounting to $200 million.[41] This infusion of funds has been especially relevant to efforts in East Jerusalem to increase the Jewish presence by way of financing the displacement of Palestinians, often in cruel ways. For instance, the Jewish Reclamation Project of Ateret Cohanim works to transfer ownership of Arab homes to Jewish families in occupied East Jerusalem and receives about 60 per cent of its funding from a tax-exempt organization situated in the United States.[42] The underlying question remains, especially for the United Nations: how should unlawful facts on the ground be addressed diplomatically? If given defining political weight, as has been the expectation so far, then a perverse incentive is created to continue to violate international humanitarian law, which directly challenges the whole undertaking of regulating the actions of an occupying Power so as to protect

[39] Israel's position is summarized in a text released by the Ministry of Foreign Affairs, "Israeli Settlements and International Law", 20 May 2001; available at www.mfa.gov.il/MFA/Peace+Process/Guide+to+the+Peace+Process/Israeli+Settlements+and+International+Law.htm.

[40] Letter from President Bush to Prime Minister Sharon, dated 14 April 2004; available at http://georgewbush-whitehouse.archives.gov/news/releases/2004/04/20040414-3.html.

[41] *The New York Times*, "Tax-exempt Funds Aid Settlements in West Bank", 5 July 2010.

[42] See *Haaretz*, "US group invests tax-free millions in East-Jerusalem land", 17 August 2009, and *IPS News*, "Anger Rises Over U.S. Tax Dollars for Settlements", 24 July 2010.

the present and future of an occupied people. Israel has acted to reconstitute expectations in its favour throughout decades of occupation, leading to a continuous diminution of reasonable expectations on the Palestinian side as to the scale and scope of any peace arrangement, as well as to a steady weakening of the authority of international law. Whenever unlawful "facts" can be converted into lawful outcomes, law is weakened and rights are denied, and a process occurs that is the opposite of "enforcement", or even implementation.

D. Settlement freeze

12. The idea of a freeze on settlement expansion highlights the ambiguous nature of the settlement process. Treating a freeze as a contribution to a peace process suspends concern about the underlying unlawfulness of the settlements, and is treated by sponsors of the peace process, particularly the Government of the United States, as a helpful concession made by Israel for which a matching Palestinian concession should be forthcoming. Israel had agreed in Annapolis at the end of 2007 to a "settlement freeze", but it was never implemented. Settlement construction, especially in East Jerusalem, accelerated, and Israel did not even fulfil its pledge to dismantle outposts. President Obama pushed in his early months as President for a total freeze on settlement expansion and construction. It was hoped that such a freeze would last at least for the duration of a peace process. Again, this posture avoided challenging the illegality of the Israeli settler movement, seeking only a pause to encourage negotiations. It should not be forgotten that Israel has never been held accountable for the consistent violation of international humanitarian law inherent in the building and expansion of each and every settlement. When Israel refused to accept a comprehensive freeze, the Obama administration settled for a 10-month freeze that excluded East Jerusalem and allowed for the construction of housing units and other buildings that had started before the freeze went into effect.[43] Several initiatives subsequent to the freeze authorized the building of specified units: 3,000 were grandfathered in on the basis of prior authorization, and some were hastily authorized to beat the deadline, as was the case for settlements in the northern West Bank, where the Shomron Regional Council authorized 1,600 units, or more than 10 times the number approved in 2008. Reports from reliable sources indicate that construction continued in many West Bank settlements during the 10-month period. Ethan Bronner reports that "[i]n many West Bank settlements, building is proceeding apace. Dozens of construction sites with scores of Palestinian workers are active".[44] The freeze is scheduled to end on 26 September 2010, and there are indications that Israel will not extend it.[45] Prime Minister Binyamin Netanyahu has always conveyed his support as agreed to with the greatest reluctance, declaring that the freeze was "exceptional" and "extraordinary" and should be understood as only a temporary suspension (which, as shown above, it never was) of normal settlement activity.[44] There have been

[43] See "Remarks with Israeli Prime Minister Binyamin Netanyahu", Hillary Rodham Clinton, 31 October 2009; available at http://www.state.gov/secretary/rm/2009a/10/131145.htm.

[44] *The New York Times*, "Despite Settlement Freeze, Buildings Rise", 14 July 2010.

[45] During a meeting of the Council of Foreign Relations, Netanyahu stated, "I think we've done enough. Let's get on with the talks."; see www.reuters.com/article/idUSTRE66709920100708; the full text of his address is available at www.pmo.gov.il/PMOEng/Communication/PMSpeaks/speechCFR080710.htm.

numerous calls for a surge of construction to start immediately after the sun sets on 26 September.[46] A member of the Netanyahu cabinet and a settler, Yuli Edelstein, Minister of Public Affairs and the Diaspora, stated publicly, "[l]et's get rid of the freeze and get back to building...It's our land anyway".[47] As suggested earlier, settlement expansion makes realization of the two-State consensus solution to the conflict virtually impossible by expropriating the land needed for a viable Palestinian State. This withdrawal of land via confiscations from Palestinians is aggravated by the fact that settlements are often built on the best agricultural land and so as to take advantage of access to water (using 85 per cent of West Bank water either for the settlements or to pump it into Israel, violating the Fourth Geneva Convention prohibition on appropriating the resources of an occupied territory). It needs to be understood that the settlements take up an estimated 3 to 4 per cent of the West Bank, but if the roads (794 kilometres), wall, security buffer zones, and Israeli security zones are included, the impact on the territorial expanse increases to 38 to 40 per cent, and it should be recalled that total Israeli withdrawal from the entire West Bank would still allot the Palestinians only 22 per cent of historical Palestine as it existed during the British Mandate.[48]

E. Settler violence

13. There have been numerous reported incidents of settler violence directed at Palestinians in the last several months, some associated with the anger generated by the implementation of the temporary and partial freeze by the Israeli Government. Some of the worst incidents, called "price tag", have involved vigilante collective punishment of Palestinians and their property by settlers as a reprisal for occasional acts of Government interference with the establishment of an outpost, although by and large settler outposts are tolerated and often provided with infrastructure services such as electricity, water and sanitation. In late July 2010, in a price tag retaliation for the removal of mobile homes at a new outpost in Yithar village in the south Hebron hills, settlers destroyed the agricultural fields of the nearby Bedouin village of Um Al-Kher.[49] The effect was devastating for the 85 persons living in the community, who were dependent for their food on produce from those fields. In other settings, Palestinians are attacked while farming their lands or when passing by a settlement on their way to school or work. Near Ramallah, in Saffa village, there were reports in July 2010 that settlers burned olive trees on privately owned Palestinian land while under the visible protection of Israeli soldiers, who blocked residents and firefighters from reaching the scene to put out the fires. Reports from independent organizations routinely confirm that Israeli soldiers offer the Palestinians no protection against settler violence even when present during such

[46] For example, member of the Knesset Danny Danon, as quoted by *The Jerusalem Post*, "Danon: Settlers will start building the moment freeze ends", 21 July 2010; available at www.jpost.com/Israel/Article.aspx?id=182062.

[47] Yuli Edelstein on Israel National Radio, 6 May 2010, as quoted at Max Blumenthal, "The Settlement Freeze that never was and never will be", at http://maxblumenthal.com/2010/07/the-settlement-freeze-that-never-was-and-never-will-be/.

[48] The Israeli Committee against House Demolitions, "The Key to Peace: Dismantling the Matrix of Control"; available at www.icahd.org/?page_id=79, and B'Tselem annual report, "Human Rights in the Occupied Territories", 1 January 2009 to 30 April 2010, pp. 22-25.

[49] Ma'an News Agency, "Report: Settler violence continues in south Hebron hills", 30 July 2010; available at www.maannews.net/eng/ViewDetails.aspx?ID=303761.

incidents, and fail to protect Palestinians even when informed in advance of an impending attack.[50] Israeli military authorities are also faulted for their unwillingness to investigate Palestinian claims of damage to persons or property.[51] Such passive complicity with settler violence violates the obligation of the Occupying Power to protect the person and property of a civilian population living under belligerent occupation. Article 53 of the Fourth Geneva Convention specifically prohibits the destruction of real or personal property belonging to civilians and their institutional arrangements. This acquiescence to settler violence is particularly objectionable from the perspective of international humanitarian law because the settlers are already unlawfully present in occupied territory, making it perverse to victimize those who should be protected (the Palestinians) while offering protection to those who are law-breakers (the settlers).

F. Ethnic cleansing in occupied East Jerusalem

14. Uri Avnery, Israeli peace activist and former member of the Knesset, made this observation: "Ethnic cleansing can be carried out dramatically (as in this country in 1948 and in Kosovo in 1998) or in a quiet and systematic way, by dozens of sophisticated methods, as is happening now in East Jerusalem."[52] Prominent among these methods, aside from expanding settlements, are a variety of ways of terminating Palestinian residence, expulsions based on alleged political affiliations, manipulations of property title, and most dramatically, demolitions (there are 15,000 demolition orders outstanding in East Jerusalem, and another 3,000 in the West Bank, all unrelated to security).[53] Ever since 1967, Israel has rejected the United Nations insistence that East Jerusalem is part of occupied Palestine and claimed that the entire city belongs to Israel. This claim is further magnified by Israeli projects to add significant acreage to Jerusalem by incorporating land into the city, including the settlements established on neighbouring hills. The perception of ethnic cleansing arises from the deliberate steps taken to increase the Jewish presence in East Jerusalem while diminishing the Palestinian presence, thereby altering the demographic balance in such a way as to support the contention that Jerusalem as a whole is a Jewish city. The linchpin of this policy by the occupying Power is the unlawful establishment and growth of settlements. Its importance was underscored by the refusal of Israel, despite explicit pressure from the United States, to extend the freeze to East Jerusalem, even on a temporary basis.[54] This refusal was highlighted by the provocative approval by the Jerusalem municipal authority of an additional 1,600 housing units in the Ramat Shlomo settlement (to make room for 20,000 more Jews).[55] The story of The Ramat Shlomo settlement is emblematic of

[50] See B'Tselem, "Settler violence"; available at www.btselem.org/english/Settler_violence/Index.asp.

[51] B'Tselem, "Human Rights in the Occupied Territories", 1 January 2009 to 30 April 2010, pp. 26-29.

[52] Uri Avnery, "Rosemary's Baby", 24 July 2010.

[53] "Israel must avoid further violations of international law in East Jerusalem", media statement, 29 June 2010, available at www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=10189&LangID=E.

[54] See the reaction of United States special envoy George Mitchell to the Israeli freeze announcement, "Israeli Settlement Moratorium Helps Move Talks Forward, U.S. Says", 25 November 2009; available at www.america.gov/st/peacesec-english/2009/November/20091125151758esnamfuak0.7892725.html.

[55] See *Jerusalem Post*, "We'll prevent future embarrassments", 14 March 2010.

the broader pattern. As has been noted with reference to Ramat Shlomo, "We are talking about an area that at the outset of the peace process [in 1993] was empty land (an uninhabited hill belonging to the Palestinian village of Shuafat) — devoid of Israelis, belonging mainly to Palestinians, and contiguous entirely with Palestinian areas — that anybody drawing a logical border would have placed on the Palestinian side".[56] The Ramat Shlomo area became Jewish and Israeli only as a result of expropriation in 1973, with the land being zoned for construction and a new settlement only in 1993, ironically coinciding with the start of the Oslo peace process. Settlement supporters argue that "everybody knows" that Ramat Shlomo will become part of Israel in a peace agreement, so why make a fuss about growth at this time?[57] Such is the logic of "facts on the ground" eating away at Palestinian rights under international law. These authors show the fallacy underlying this one-sided approach by pointing out that the implication of the "everybody knows" approach is that there must be other parts of the city that everybody knows will be Palestinian, but, in fact, no such areas exist. Instead, Israel is increasingly targeting predominantly Palestinian neighbourhoods, especially surrounding the Old City, such as Ras al Amud and Jebel Mukabber, for Jewish construction and Palestinian demolitions and evictions.[58] The approval of permits to construct 20 units of housing for Jews in the ancient Palestinian Sheikh Jarrah neighbourhood, at the site of the formerly Palestinian-owned Shepherd Hotel, was particularly provocative. The situation was rendered worse from the perspective of human rights as two large Palestinian families totalling 54 persons were evicted by Israeli court order despite having resided there since the 1950s. Their eviction was judicially upheld on the ground that the property had been legally purchased from its former owners to enable the establishment of Jewish housing. Several Palestinian families were forced to live on the street for extended periods of time, having neither alternate living arrangements nor the resources to obtain them. There are reports of Palestinian families targeted for eviction by Ateret Cohanim, an ultra-orthodox Jewish private organization that collects funds from abroad to purchase Palestinian properties and pursue legal strategies to evict families that have long resided in East Jerusalem, as an aspect of their efforts to increase the Jewish character of the areas near the Old City.[59] Israel's judicial system and police facilitate such activities. The experiences of the large Palestinian Karresh and Al-Kurd families are illustrative of this process of pushing Palestinians living in a Muslim neighbourhood into the street, with the support of Israeli police, to make way for settler families.[58] The United Nations Special Coordinator for the Middle East Peace Process, Robert Serry, declared as "unacceptable" and "provocative acts" the latest displacement of long-term Palestinian residents by armed Israeli settlers, acts encouraged by Ateret Cohanim. Mr. Serry called upon Israel "to remove the settlers from the property", nine buildings near the Old City, and "restore the status quo ante".[60] In related developments, the Israeli Committee against House Demolitions (ICAHD) called attention to a wave of demolitions, dispossessions and revocation

[56] Lara Friedman and David Seidemann, "Jerusalem, settlements, and the 'everybody knows' fallacy", The Middle East Channel, *Foreign Policy*, 19 March 2010.

[57] Ibid.

[58] Association for Civil Rights in Israel, "Human Rights in East Jerusalem: Facts and Figures", May 2010; available at www.acri.org.il/pdf/eastjer2010.pdf.

[59] See Palestinian Centre for Human Rights, Weekly Report on Israeli Human Rights Violations in the Occupied Palestinian Territory (29 July-4 August 2010).

[60] Ma'an News Agency, news release, 30 July 2010.

of residency rights in the Jordan Valley. In late July 2010, ICADH objected to the massive demolition activity in the village of Al Farisye, displacing 107 persons, including 53 children.[61] Twenty-six residential tents, 22 animal shelters, seven clay ovens, eight kitchens, 10 bathrooms, four water tanks, an agricultural shed, homes, belongings and large amounts of food, and a total of 74 structures were destroyed by Israeli bulldozers.[62]

G. The wall

15. As previous reports emphasized, the separation wall, of which 85 per cent is being constructed on Palestinian territory, is both a violation of the basic Israeli duty to respect the territorial integrity of the land occupied since 1967 and a serious infringement on the Palestinian right of self-determination.[63] This assessment was affirmed by the International Court of Justice in its 2004 advisory opinion, later accepted in a resolution adopted by a strong majority in the General Assembly and is supported by the independent judgment of most international law specialists.[64] The route of the wall is obviously aimed at setting the stage for a future annexation of occupied territory between the wall and the Green Line, and at the same time incorporate into Israel the most important settlements, containing as much as 98 per cent of the West Bank settler population along with key water aquifers. In 2010, on the sixth anniversary of the International Court of Justice ruling, Saeb Erakat, chief negotiator for the Palestinian Authority, stated, "Simply put, the wall is an integral part of a regime intent on heading in the direction of apartheid".[65] Israel's defiance of international law with respect to the wall is flagrant and continuing, with the failure by the United Nations to take appropriate steps to secure implementation of the main International Court of Justice finding undermining the authority of the Court, of the United Nations and of international law generally. In many places, the wall cuts Palestinians off from their own land, which they can access only by passing through Israeli-controlled gates, which requires permits issued by the military administration in the West Bank that have proved exceedingly difficult to obtain. The construction of the wall remains incomplete; 434 kilometres of a planned 707 kilometres has been completed (61.4 per cent).[66] Construction has slowed in recent years, apparently because of its expense. Weekly non-violent demonstrations at various points of the construction, especially in the villages of Bil'in, Nil'in and Nabi Saleh, have been dispersed through the use of excessive force by the Israel military and police forces using tear gas, sound and gas bombs

[61] ICAHD, "Mass demolitions in the Jordan Valley", 22 July 2010; available at www.icahd.org/?p=5179.

[62] Stephen Lendman, "In Palestine, Demolitions and Dispossessions", *Palestine Chronicle*, 31 July 2010.

[63] Office for the Coordination of Humanitarian Affairs, West Bank Movement and Access, June 2010, p. 2

[64] See General Assembly resolution ES-10/14 and "UN assembly votes overwhelmingly to demand Israel comply with ICJ ruling", 20 July 2004; available at www.un.org/apps/news/story.asp?NewsID=11418&Cr=middle&Cr1=east.

[65] See PLO, Negotiations Department, press release, 8 July 2010, at www.nad-plo.org/view_area_page.php?view=news-updates_080710&css=1.

[66] Office for the Coordination of Humanitarian Affairs, "West Bank Barrier Route Projections", July 2010; available at www.ochaopt.org/documents/ocha_opt_route_projection_july_2010.pdf.

and rubber bullets, which have caused many injuries as well as several deaths.[67] Also, in recent months, leaders of the demonstrations, journalists and international observers have been arrested and detained, often in ways designed to terrify not only the person apprehended but his or her family members as well, involving night-time entry into homes and the humiliation of individuals. Widely respected leaders of the Campaign against the Wall, including Jamal Juma', Mohammed Othman and Abdallah Abu Rahmah, have been arrested in this manner, either uncharged or charged with contrived offences.[68] Rahmah, for instance, was indicted for "arms possession", with the arms turning out to be a collection of used tear-gas canisters shot at the protesters. Juma' was charged with incitement. These infractions of the civil rights of Palestinians under occupation violate the basic Israeli obligation to uphold the rights of an occupied people. Security cannot be reasonably claimed in this context of non-violent Palestinian demonstrations against the manifestly unlawful and intrusive wall.

III. Gaza

A. General comment

16. Although the blockade has eased somewhat, the civilian population of Gaza continues to be victimized in numerous unlawful ways by an occupation regime that systematically imposes collective punishment, in violation of article 33 of the Fourth Geneva Convention. Tzipi Livni, the Minister for Foreign Affairs of Israel at the time of the 2008-2009 Gaza war, recently denied that the blockade was designed to punish the Palestinian people. In her words, "[t]he reason for the blockade on Gaza was not to punish the Palestinian people but to delegitimize Hamas".[69] Regardless of intentions, using a blockade to delegitimize a political opponent inevitably punishes the people, and such a delegitimizing project provides no legal excuse for denying food, medical supplies, fuel, building materials, and normal peacetime activities to an impoverished population living under belligerent occupation. Additionally, in the name of security Israel relies on excessive force to quell signs of unrest and resistance, and subjects the whole population of the Gaza Strip to conditions that cause acute fear and foreboding. The confinement of 1.5 million Gazans without granting exit permits except in rare instances denies the people of Gaza basic rights of health and education, and interferes with normal social patterns based on family and friendship. The blockade has caused the collapse of the Gaza economy, increasing levels of dependence on United Nations humanitarian relief, intensifying poverty and unemployment. An appeal in the form of a letter signed by 10 winners of the Israel Prize and other Israeli university faculty members was sent to the Minister of Defence of Israel asking for the lifting of the travel ban, in effect since 2000, on Palestinian students from Gaza studying in the West Bank.[70] The appeal letter, prepared under the auspices of the Gisha Legal Centre for Freedom of Movement, called attention to the failure by the occupation authorities to adhere to the 2007 ruling of the Israeli High Court that students from

[67] Violent incidents following demonstrations against the wall are reported weekly by local non-governmental organizations such as the Palestinian Centre for Human Rights.

[68] See Jonathan Cook, "Israel's war on protest", Ma'an News Agency, 13 February 2010.

[69] Deborah Solomon, "Questions for Tzipi Livni", *The New York Times*, 24 June 2010; available at www.nytimes.com/2010/06/27/magazine/27FOB-Q4-t.html.

[70] *Jerusalem Post*, "Israel Prize winners to Barak: Let Gazans study in West Bank", 29 April 2010.

Gaza who wished to study in the West Bank should be allowed to do so, subject only to legitimate Israeli security concerns.[71] The signed letter pointed out that "academic and professional training is critical to the well-being and growth of Palestinian society and the individual development of each one of its young men and women who wish to better himself or herself".[72] In a prominent case, the High Court decided in June 2010 that a 29-year-old Gazan lawyer, Fatma Sharif, could be denied the right to attend Bir Zeit University for the purpose of obtaining a master's degree in human rights.[73] She was denied a travel permit because under the strict regulations delimiting the blockade, only special humanitarian or urgent medical needs are accepted as valid reasons for authorizing departure from Gaza. The unanimous judicial decision of the High Court expressed its legal assessment as follows: "We are not convinced that under the present political and security situation, the personal circumstances [of the petitioner] justify intervention in the decision of the respondent [Minister of Defence]." Thus, even in the aftermath of a supposed post-flotilla rollback of the blockade of Gaza, this request for educational travel was administratively denied and judicially confirmed. The refusal to allow travel to and from Gaza to sustain social relations is a cruel obstacle to healthy personal development and a normal life, even taking account of the rigours of occupation. There are no security justifications for such denials of basic human rights associated with travel and education. In fact, Israel seems uninterested in improving the security situation. It has displayed no willingness during the past several years to explore opportunities to negotiate a long-term ceasefire with the de facto authorities in Gaza. This is disappointing, considering that a prior temporary ceasefire during the last half of 2008 reduced transborder violence almost to zero and was terminated only after a lethal attack on Gaza launched by Israel on 4 November 2008 that resulted in the death of six Palestinians.[74] Repeated proposals from the Palestinian side to link long-term extensions of the ceasefire with a lifting of the blockade and opening of the crossings have been ignored by Israel. The terminology of blockade should also be questioned. Israel has always monitored the inflow of weaponry to Gaza since the original occupation in 1967, and in this respect what was imposed in mid-2007 was a comprehensive effort to keep goods, services, and persons from entering or leaving Gaza. As such, it was more in the nature of a prison lockdown than a traditional blockade, what in medieval times was described as a state of siege.

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[71] Gisha Centre, "Held Back: Students Trapped in Gaza", June 2008; available at http://www.gisha.org/UserFiles/File/Students%20report%20Eng%20-%20Online%20Version.pdf.

[72] Gisha Centre, "10 Israel Prize laureates and dozens of academics urge the Defense Minister", 28 April 2010; available at www.gisha.org/index.php?intLanguage=2&intItemId=1745&intSiteSN=113.

[73] Gisha Centre, "Israel refuses to allow a lawyer to leave Gaza to reach her studies in democracy and human rights in the West Bank", 1 July 2010; available at www.gisha.org/index.php?intLanguage=2&intItemId=1832&intSiteSN=113.

[74] *The Guardian*, "Gaza truce broken as Israeli raid kills six Hamas gunmen", 5 November 2008; available at www.guardian.co.uk/world/2008/nov/05/israelandthepalestinians.

B. Freedom flotilla incident

17. On 31 May 2010, the Israeli Defense Forces attacked six ships comprising the Gaza Freedom Flotilla.[75] The undertaking constituted an initiative of global civil society. The ships proceeding under the auspices of the Free Gaza Movement and the Turkish Foundation for Human Rights and Freedom and Humanitarian Relief (IHH) were carrying 10,000 tons of humanitarian supplies to the people of Gaza. On board were 718 persons from 37 countries.[76] The ships were violently intercepted in international waters in the middle of the night, including by 13 commandos belonging to the special force units of the Israeli Defense Forces, who landed from helicopters on the lead Turkish ship. Fighting ensued, leading to the death of nine peace activists; dozens of others were injured and hundreds detained.[77] International maritime law clearly disallows a military disruption of a humanitarian undertaking in international waters, especially in such a violent manner, but more authoritative assessments will have to await the results of several investigations currently under way. The facts are contested as to how the violence started and are being investigated by various panels, including one appointed by the President of the Human Rights Council[78] and another by the Secretary-General.[79] Israel is participating in the latter and has appointed an Israeli to participate. As those who organized this humanitarian relief effort to bring help to the blockaded people of Gaza have repeatedly stressed, their purpose was symbolically to provide needed items of food, medical supplies, construction materials and educational supplies. Their major substantive goal was to bring the blockade itself to an end through an appeal to world public opinion. In this regard, although the ships were not allowed to reach their destinations and the citizen activists on board the vessels paid a heavy price, the venture was spectacularly successful from a political perspective. For the first time since its establishment three years ago, the blockade came under sustained global scrutiny for having inflicted severe and unlawful humanitarian harm on the civilian population of Gaza. The leadership of Israel in response agreed to limit the blockade.[80] It is too early to tell whether this adjustment of the blockade will alleviate the humanitarian crisis in Gaza. To date, there are no indications that Israel will allow humane conditions to emerge in Gaza, which would require allowing unimpeded entry and exit both for Gazans wishing to study or travel outside Gaza and for journalists, family members and friends to visit Gaza without acquiring permits and enduring long waits and cumbersome security procedures. There are

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[75] "Gaza aid convoy killings: 'Those responsible must be held accountable'", press release, 31 May 2010; available at www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=10080&LangID=E.

[76] See www.freegaza.org/ and www.ihh.org.tr/ for an account from the participants.

[77] For an Israeli perspective, see Prime Minister Netanyahu's statement of 1 June 2010; available at www.pmo.gov.il/PMOEng/Communication/Spokesman/2010/06/spokehatshara010610.htm; for a sample of international reporting, see *The New York Times*, "Israel intercepts Gaza Flotilla; Violence reported", 30 May 2010.

[78] See Human Rights Council resolution 14/1, 2 June 2010.

[79] UN News Centre, "Ban announces Israeli, Turkish members of inquiry panel into flotilla incident", 7 August 2010; available at www.un.org/apps/news/story.asp?NewsID=35561&Cr=gaza&Cr1=.

[80] See Israeli Security Cabinet decision, 17 June 2010; available from www.mfa.gov.il.

reports that a second flotilla of humanitarian aid is planned.[81] It would consist of ships on a humanitarian mission organized and funded by citizens in various countries, and seek to make delivery directly in Gaza. Israel has warned that it will prevent any vessels from breaking its blockade, and the United Nations Secretariat has also issued an official statement discouraging civil society efforts to circumvent Israeli regulations pertaining to the occupation of Gaza. At the same time, there are many indications of a worldwide surge of support for Palestinian solidarity efforts, including a rapidly expanding boycott, divestment, and sanctions campaign.[82] Comparisons have been made with increasing frequency to the anti-apartheid campaign of the 1980s and early 1990s, which seemed to influence decisively the balance of thinking within South Africa as to how to resolve the conflict over constitutionalism and racism in the country.

C. Report of the United Nations Fact-Finding Mission on the Gaza Conflict ("Goldstone report")

18. As my previous report emphasized, the Goldstone report has provided strong reinforcement for allegations of war crimes arising from the Gaza war of 2008-2009, and its findings deserve the greatest respect. The report recommended that, as a first step on the road to accountability, Israel and the responsible Palestinian authorities be given the opportunity to investigate these allegations for themselves, and take appropriate action in a manner that accords with international standards.[83] There are many reasons to question the capacity of any State to investigate the alleged wrongdoing of its own military. To reinforce the seriousness with which the accountability issue is taken by the Human Rights Council, a Committee of Experts was established, its members appointed by the High Commissioner for Human Rights, pursuant to Council resolution 13/9.[84] High Commissioner Navi Pillay indicated that the Committee "will focus on the need to ensure accountability for all violations of international humanitarian and international human rights laws during the Gaza conflict, in order to prevent impunity, assure justice, deter further violations and promote peace".[85] It is important that the findings of the Committee, expected to be presented at the fifteenth session of the Council, be taken seriously as part of the effort to ensure accountability. If the Committee concludes that the investigations by both parties were satisfactory, that would provide grounds to move on and encourage Israel and the responsible Palestinian authorities to follow the recommendations of their own

[81] See Press TV, "Activists planning new Gaza flotilla", 4 August 2010, available at www.presstv.com/detail.aspx?id=137483&sectionid=351020202; and *The New York Times*, "American activists plan Gaza Flotilla ship named for Obama book", 20 July 2010, available at http://thelede.blogs.nytimes.com/2010/07/20/american-activists-plan-gaza-flotilla-ship-named-for-obama-book/.

[82] See U.S. Campaign for the Academic and Cultural Boycott of Israel, "Global boycotts of Israel intensify after bloody Flotilla attack", 5 June 2010, at http://usacbi.wordpress.com/2010/06/05/global-boycotts-of-israel-intensify-after-bloody-flotilla-attack/.

[83] See A/HRC/12/48.

[84] See "Progress report of the High Commissioner on the follow-up to the report of the United Nations Independent International Fact-Finding Mission on the Gaza Conflict" (A/HRC/14/CRP.4).

[85] UN News Centre, "UN rights chief unveils members of independent probe into Gaza conflict", 14 June 2010.

national inquiries. However, if the Committee concludes that one or another party has not carried out satisfactory investigations, then the responsibility shifts back to the international community to implement steps in accordance with the recommendations of the Goldstone report. It is notable that a second report by the Ministry of Foreign Affairs of Israel acknowledges several of the most serious findings of the Goldstone report, including the use of phosphorus in areas where it was known that civilians were present, the use of Palestinian civilians as human shields and the targeting of civilians and prohibited targets.[86] There have been announcements that the Israeli Defense Forces plan to initiate disciplinary action in relation to four incidents given prominence.[87] These developments do suggest some follow-up on the part of Israel to the allegations of the Goldstone report, but there is no indication that the most serious crimes alleged, involving reliance on an overall battle plan of excessive and indiscriminate force, have been examined by Israel, and failing this, imposing accountability only on soldiers in the field carrying out broad war plans confers impunity on the most serious perpetrators of war crimes and of breaches of international humanitarian law.

IV. Recommendations

19. A study of the legal, political, social, cultural and psychological impact of prolonged occupation should be undertaken by the Human Rights Council, perhaps in conjunction with the Government of Switzerland, which is reportedly considering a similar inquiry.

20. Palestinian legal rights, including the right of self-determination, must be fully respected and implemented in all attempts at a peaceful resolution of the conflict between the two peoples.

21. The recommendations of the Goldstone report should be implemented without further delay, in accordance with the conclusions reached by the Committee of Experts established by Human Rights Council resolution 13/9.

22. The United Nations should lend its support to the worldwide boycott, divestment and sanctions campaign, so long as Israel unlawfully occupies Palestinian territories, and the United Nations should endorse a non-violent "legitimacy war" as an alternative to both failed peace negotiations and armed struggle, as the best available means of promoting the rights of the civilian population of the occupied Palestinian territory, as specified by international humanitarian law.

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[86] Ministry of Foreign Affairs of Israel, "Gaza Operation Investigations: Second Update", July 2010.

[87] See Yaniv Reich, "New Israeli report on Operation Cast Lead confirms Goldstone report's main findings", 22 July 2010; available at www.hybridstates.com/2010/07/new-israeli-report-on-operation-cast-lead-confirm-goldstone-reports-main-findings/.